

**MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA**

UNITED STATES OF AMERICA v. MAJID SHOUKAT KHAN	AE 049C CANCELLATION ORDER 14 November 2020
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1. Participants in the military commission hearing currently scheduled for 17-18 November 2020, will travel from New York, Maryland, Virginia, the District of Columbia and Texas to the site of the hearing in Reston, Virginia. When AE 048B¹ was published on 21 September 2020, the Center for Disease Control (CDC) reported 39,345 confirmed COVID-19 cases and a seven day moving average of 41,192 cases per day throughout the United States.² The effective reproduction rate for the virus, the rate at which the virus grows or shrinks was at or below 1.0 in Virginia, the District of Columbia, and Texas and 1.01 in Maryland and 1.07 in New York.³ The pandemic appeared to be being managed such that the Commission was not overly concerned about travel to the National Capital Region to conduct the hearings.

2. On 9 November 2020, the CDC, reported 122, 910 confirmed COVID-19 cases and a seven day moving average of 109, 663 cases per day throughout the United States. The effective reproduction rate for the virus was above 1.20 in each of the above listed jurisdictions, except for Virginia which was at 1.15. On 12 November 2020, the CDC, reported 194, 610 confirmed COVID-19 cases and a seven day moving average of 132, 442 cases per day throughout the

¹ AE 048B, Litigation Schedule Order, dated 21 September 2020.

² See CDC website at https://covid.cdc.gov/covid-data-tracker/?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fcases-in-us.html#trends_dailytrendscases, accessed 14 November 2020.

³ See Rt: Effective Reproduction Number <https://rt.live/>, accessed 14 November 2020. “Rt represents the effective reproduction rate of the virus calculated for each locale. It lets us estimate how many secondary infections are likely to occur from a single infection in a specific area. Values over 1.0 mean we should expect more cases in that area, values under 1.0 mean we should expect fewer.”

United States. The effective reproduction rate for the virus remained above 1.20 in each of the above listed jurisdictions except for Virginia which was at 1.15. Additionally, the Commission was informed by the Trial Judiciary Staff Director of the 13 November 2020 decision by the Governor of Virginia to reduce the number of people who could gather in public or in private, inside or outside, from 250 to 25 effective midnight 15 November 2020.⁴ The Commission further notes there is inherent and significant risk of more onerous restrictions being placed on all participants before they can return to their places of duty/residences.

3. The Commission has grave concerns that the pandemic is no longer being managed to a relatively safe degree and that travel to the National Capital Region to the site of the hearing will place participants at significant risk. The Defense in AE 049A⁵ noted the concerns, travel restrictions and collateral consequences of Ms. Jestin's travel to and sojourn in the National Capital Region for more than 24 hours.

4. The Commission finds it is not safe or practicable at the present time to conduct the scheduled hearing on 17 and 18 November 2020 due to the recent very significant increase in COVID-19 cases caused by the rapid spread of the virus not only in the jurisdictions noted above, but throughout 49 of the 50 states and the District of Columbia.⁶

⁴ See "Governor Northam Announces New Statewide Measures to Contain COVID-19" available at <https://www.governor.virginia.gov/newsroom/all-releases/2020/november/headline-861342-en.html>, accessed 14 November 2020.

⁵ AE 049A, Defense Motion to Excuse the Presence of Counsel, filed 12 November 2020.

⁶ Mississippi's Rt is currently 0.84. Source: Rt: Effective Reproduction Number <https://rt.live/>, accessed 14 November 2020.

5. The Commission **CANCELS** the hearings on 17 and 18 November 2020. The hearings will be rescheduled at a time to be determined consistent with accomplishing the sentencing hearing of the Accused in May 2021 as set forth in AE 048B.⁷

So **ORDERED** this 14th day of November 2020.

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DOUGLAS K. WATKINS
COL, JA, USA
Military Judge

⁷ The Commission apologizes to the assistant defense counsel who traveled to Naval Station Guantanamo Bay for his inconveniences and expresses its appreciation for all those who worked so hard to make these hearings happen under difficult circumstances.